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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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IFEB 26 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Closed Captioning and Video Description of)
Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

**COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)**

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(National Cable Satellite Corporation)**

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To: The Commission

**COMMENTS OF C-SPAN AND C-SPAN 2
(National Cable Satellite Corporation)**

I. INTRODUCTION and SUMMARY

National Cable Satellite Corporation ("NCSC") is a charitable and educational corporation created in 1979 by private sector cable television operators to provide public affairs television programming to the American people. It has done so on a non-profit basis through its two full-time satellite-delivered networks, C-SPAN and C-SPAN 2 (the "C-SPAN Networks"), and more recently through the launch of C-SPAN 3 on a part-time basis in the Washington, D.C. area. NCSC broadened its public service mission most recently with the launch of audio and video coverage of public affairs events distributed via the Internet.

As the television industry continues the trend toward providing more closed captioning for those with hearing impairments, NCSC anticipates broadening its public service mission yet again. As it prepares to provide closed captioning services, however, NCSC's preference is to do so in the same manner in which it created C-SPAN, C-SPAN 2 and C-SPAN 3 -- on a voluntary basis and without an unnecessary and troublesome expansion of governmental regulation over the content of video programming.

In these Comments NCSC (i) informs the Commission of the implications of a full captioning requirement on the C-SPAN Networks and their ability to maintain and expand their current level of contribution to the public interest, (ii) notes the significance of the jurisdictional issue, urging that it be addressed with care by both the Commission and Congress, and (iii) makes several other comments on the rules proposed in the above-referenced proceeding.

II. THE UNIQUE FORMAT AND OPERATIONS OF THE C-SPAN NETWORKS PRESENTS A FORMIDABLE CLOSED CAPTIONING CHALLENGE.

As similar as the on-screen images of all the other so-called "talking head" networks may appear to the on-screen images of the C-SPAN Networks, the other networks are vastly different in format and operations. Those not always apparent differences will result in dramatically different burdens in meeting the challenges of closed captioning. Primary among those differences between the C-SPAN Networks and the others is the extent to which the C-SPAN Networks provide coverage of public affairs events on a live and taped basis without any interruption whatsoever.

In other words, nearly every minute of the 24-hour programming day is the spoken word. Our format is notable, in the captioning context, for its lack of the frequent pauses that other networks easily incorporate into their day. Our commitment to so-called gavel-to-gavel coverage of all events keeps promotional spots and interstitial programs to an absolute minimum. For example, in 1996 only eight tenths of 1 percent of our programming year was devoted to such breaks between programs. The format also leaves fewer opportunities for breaks that are primarily textual in nature (and therefore without need of captioning). In 1996, less than half of 1 percent of our programming fell into that category. Although there may be some exceptions along the way, inherent in news and public affairs television is the continuous, uninterrupted stream of words. The C-SPAN-style coverage of a political convention, for example, is to show the whole event. There are simply no interruptions of the sort other news organizations employ in their convention coverage, the content of which is either now captioned by others, or which might later be exempted from a captioning obligation.

The C-SPAN Networks format also lacks scripted programs of any sort. Consequently, not a single one of our regularly scheduled programs (*e.g.*, the weekday morning *Washington Journal*, *America and the Courts*, or *Booknotes*) is able to benefit from the cost and operational advantages of electronic newsroom captioning.

It is probably not widely appreciated that the C-SPAN Networks do not rely on outside production companies for any of their programming. Although we will acquire videotaped coverage of events from others from time to time, the relationship with the providers is not one

that permits us to put the captioning obligation on them, as do other networks including news networks. The captioning burden on NCSC can not be mitigated by passing it on to others.

There *are* no others.

The only exception to the previous statement applies to the C-SPAN Networks' carriage of the floor proceedings of the U.S. House and Senate. Contrary to the belief of many that C-SPAN's cameras are covering the congressional floor debates, those cameras belong to the respective legislative bodies. At the moment, each body pays for the captioning of the video feed it produces of its sessions. We deliver that captioning to our audience. There is no guarantee that Congress will continue to provide that captioning, particularly if Congress continues to privatize its operations. Nevertheless, even if the congressional captioning continued it would constitute only about 11 percent of our annual programming. In other words, of the 17,520 hours of programming contained on the C-SPAN Networks each year (not including C-SPAN 3), we are responsible for the production, and would be *solely* responsible for the captioning, of 89 percent of that programming.

The nature of news and public affairs programming keeps the captioning costs higher than for entertainment and other information programming because of the extremely short shelf life of most programming. Also, much of the programming is transmitted on a live basis, and that which is taped is most often transmitted within only hours of its production, and frequently more quickly than that, leaving little time for any captioning other than real time captioning. Again, contrary to the impression of some, and perhaps of even some at the Commission, the

per-program cost of captioning is not significantly lowered because of extensive repeats of programs across the 24-hour news cycle. In our case, there are two factors that keep the proportion of repeat programming down. First, the gavel-to-gavel format results in long programs that simply can not be repeated too often within a short scheduling period. Second, we keep generating more news and public affairs video every year. The trend is clearly toward more such "first run" programming. For example, in 1988 the C-SPAN Networks transmitted 5,874 hours of "first run" programs. By 1995 we transmitted 8,045 hours of such programs, before dropping back to 6,748 hours last year.¹ Although the trend line is not steady, it is clear: there are fewer repeat programs, and higher per-program captioning costs as a result.

The C-SPAN Networks by virtue of their dependence on current affairs programming also lack so-called "library" programming. From time to time we will retransmit older coverage of important past speeches or events, but our reliance on such programming is *de minimis* as compared with entertainment oriented networks. Accordingly, on the day after the closed captioning rules go into effect virtually none of our programming will be exempted from the captioning obligation as "library" programming.

The C-SPAN Networks appear about to be subject to greater captioning obligations than most, if not all, of the other full-time national programming services, including the other news organizations. The culprits are our format and our success in producing more original public affairs programming each year. Ordinarily, those attributes bring us praise. Yet, in the closed

¹ None of these numbers include programming transmitted on C-SPAN 3.

captioning context, they will subject the C-SPAN Networks to huge proportionate costs as the captioning obligation ripens.

Based on our reading of the proposals contained in the Notice of Proposed Rulemaking in this proceeding (the "Notice"), and based on our understanding of current captioning options and costs, at the end of an 8-year phase-in period NCSC's closed captioning costs will comprise roughly 26 percent of our programming budget. Such a large new cost is of particular concern to an organization already operating in the public interest and on a non-profit basis.

III. THE NOTICE IMPLIES A DRAMATIC EXPANSION OF COMMISSION AUTHORITY OVER THE CONTENT OF PROGRAMMING NETWORKS. THE COMMISSION SHOULD IGNORE THAT IMPLICATION AS WITHOUT ANY BASIS.

The Notice proposes that the responsibility for compliance with closed captioning requirements be placed on video programming providers, which are defined as all entities providing video programming directly to a customer's home. In other words, the Commission properly shies away from directly regulating the content of programming networks in this rulemaking. We support the Commission's proposal on this point.

However, the Notice goes on to ask about the feasibility of having "program providers and owners" share responsibility for closed captioning, noting that Section 713 of the statute "may have been intended to provide the Commission with jurisdiction"² over them. In support of its query, the Commission cites the House report definition of the term "provider" as

² Notice, at Para. 29.

"the...cable network or other service that provides programming to the public."³ The Notice contains the additional suggestion that program "owners" might include the producer, the copyright holder, the syndicator, or others.

The implications of such jurisdiction are staggering. Were the Commission to achieve such jurisdiction over the producers and copyright holders of the programming appearing on American television sets, it would have authority over potentially the world's entire creative community. While the drafters of Section 713 may have sought to achieve efficiencies by encouraging captioning at the production stage, their approach is woefully lacking in light of the dramatic expansion of Commission authority required to give effect to their goal. Simply put, a nearly offhand statement in the legislative report does not constitute a sufficient basis upon which to break such jurisdictional ground and particularly so with respect to the content of speech produced, owned or distributed by entities not now subject to such jurisdiction.

Such a jurisdictional grab would touch NCSC on several fronts. It owns and operates three cable networks. It is the producer of nearly all the programming it distributes on those networks. It is also the holder of the copyrights in most of that programming. Although it has been operating C-SPAN for nearly 20 years and has waded through many permutations of cable legislation and regulation, NCSC's programming content has remained largely untouched despite more considered and thoughtful attempts to reach it. The considerable constitutional protections against such intrusions should not be breached in this rulemaking. The Commission should

³ Notice, at Para. 29, fn 87.

withdraw from any attempt to assert jurisdiction over any entity not already its licensee or permittee.

Even if the Commission withdraws entirely from the attempt to reach beyond its mandated jurisdictional grasp, it is not entirely clear that the proposed imposition of the closed captioning obligation on only licensees and permittees will avoid inappropriate effects on programmers' content. To the extent that the private programming contracting process evolves into a mere proxy for Commission jurisdiction over programmers, the content regulation risks remain.

IV. FURTHER COMMENTS ON IMPLEMENTATION

A. The Notice Has Wisely Provided for a Reasonable Phase-In Period

Clearly, the Commission understands that the goal of captioning all television programs will depend in significant part on evolutions in both the economics of the captioning industry and its technology. Those changes will take time, during which all parties will learn what works and what does not. Our preference is for a 10 year phase-in period with the schedule recommended in the Notice. The programming format and operations unique to the C-SPAN Networks (as described above) will require the longer phase-in period.

B. The Phase-In Period Should Not be Accelerated for National Public Affairs Programming

Despite the higher priority for captioning the Notice places on news and public affairs programming, it is precisely the programming's spoken word intensive character that argues for a

longer, rather than a shorter phase-in period to apply to the C-SPAN Networks and other such national full-time programming services.

C. The Notice Has Taken an Appropriate Approach Toward Library Programming

We agree that there is no legislative mandate that all library programming be captioned. An absolute requirement would surely result in reducing the amount and variety of programming options. We also urge the Commission to refrain from setting any percentage of such programming that must be captioned. As its proposal for a multi-year phase-in demonstrates, the Commission is willing to give all parties and market forces a chance to operate before the full obligation ripens. Here, too, the Commission should wait and see, particularly in light of some evidence that library captioning is steadily increasing.

D. Some Classes of Programming Should be Exempted Regardless of Economic Burden

The Notice is correct in proposing that programming that is primarily textual in nature be exempted from the rules. Captioning of such programming would be redundant to the extent the audio track, if there is one, merely repeats the content of the textual display.

Similarly, interstitial programming and promotional announcements should be exempted. Promotional announcements are frequently custom made on a short turnaround basis for a particular time slot and have no repeat value. Such announcements also contain the essence of the message in text form. Interstitial programs are exactly that. They do not comprise the essence of the programming service on which they may appear and could easily be dropped

entirely if a captioning obligation is imposed. An interstitial program should be defined as any program of 15 minutes duration or less. Any other attempt at defining an interstitial program will give rise to unresolvable disputes.

E. Start-up Programming Services and Less Widely Distributed Services Should be Exempted

C-SPAN 3 qualifies as both a start-up and a limited distribution programming service. Unless a specific exemption is provided for such programming services at the outset, the captioning burden could easily prevent their creation or hasten their demise. We propose that start-up programming services intended for national distribution be given a 5-year grace period before the captioning obligation is imposed, and then be given a full 10-year phase-in period thereafter. Moreover, no programming service intended for national distribution should be subject to the captioning obligation unless it reaches a minimum of 15 million households. Once that threshold distribution is reached, the programming service should then have a 10-year period within which to obtain full compliance.

F. The Notice Takes the Appropriate Approach in Deferring in the Setting of Standards for Accuracy and Quality

Clearly, the Commission must set standards for the technical standards of closed captioning. However, it is correct to defer action on the non-technical aspects of quality and accuracy in order to provide time for the captioning community to adjust to the new technical and business environments certain to be created by the new rules. Such deference and the flexibility offered by it is especially relevant to news and public affairs programming services.

such as the C-SPAN Networks for whom live and quick turnaround programming is dominant.

We therefore support the approach taken by the Notice on this issue, and in particular support the classification of spelling in captions as a non-technical issue.

G. The Enforcement and Compliance Mechanisms Should be Complaint-Driven, Strive for Ease of Administration, and Impose a Minimum of Reporting and Recordkeeping Requirements on Video Programming Providers

We agree that a complaint-driven mechanism is the most appropriate as these rules are implemented. The process would be most efficient if each complaint is first required to be made to the video programming provider before the Commission becomes involved. No formal enforcement action should be initiated on the basis of a single complaint.

In no case should a video programming provider be required to maintain a public file of compliance. It is sufficient at this point in the industry's experience with closed captioning to establish only a general requirement that each provider maintain records sufficient to demonstrate compliance. Any more detailed requirement would consume administrative resources unnecessarily.

H. "Overnight" Programming Should be Exempt

For nearly all programmers including the C-SPAN Networks the overnight daypart (from 2 am to 7 am (Eastern)) is not significantly viewed and should not be required to be captioned. Given the huge captioning burden we will face, we will probably find real time captioning to be the most effective means of compliance. The exemption for the overnight daypart would

significantly lower our personnel costs without shortchanging a significant portion of the audience intended to be served by closed captioning.

I. The Video Programming Provider Should be Held to Comply on a Network by Network Basis, and to Certify Such Compliance Annually

During the phase-in period no cable operator should be able to discriminate among programming networks by unreasonably demanding captioning obligations for some programmers that exceed the proposed levels of captioning for each benchmark period. Without such a limitation, some programmers would lose all benefit of the reasonable phase-in period proposed by the Notice.

The calculation of that compliance should not be more frequent than annually. An annual time frame minimizes paperwork and provides a more accurate reflection of over-all captioning efforts.

J. In Recognition of the Vagaries of Round the Clock Programming, the Commission Should Define Full Compliance as Something Less Than 100% Captioning

For national programming networks the Commission should recognize that the unanticipated often occurs. This is especially so for news and public affairs networks operating on a full-time cycle. Some wiggle room should be factored into the rules so that good faith efforts to comply are not burdened with administrative enforcement procedures for failure to miss the captioning requirement from time to time. The Commission should consider regarding captioning of 80% of non-exempt programming as full compliance.

Respectfully submitted,
NATIONAL CABLE SATELLITE CORPORATION,
d/b/a C-SPAN

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